

## INCOME TAX REGULATION

### SPECIAL DEDUCTIONS FOR CERTAIN LEASED EQUIPMENT

In order to provide easier access to capital, to promote investment and encourage growth, and thus to stimulate additional employment throughout the economy, this Regulation is designed to provide incentives for the use of leasing as a means of financing the acquisition of equipment. It is promulgated under the authority granted by Law 25 of 1964 and any rules or regulations issued there under (the “Income Tax Law”), and shall remain in force under any new legislation that authorizes regulation of the tax consequences of leasing, or until specifically modified or repealed.

#### Article 1      Definitions and Terms

The following terms shall be used for purposes of this Regulation and for the application of the provisions of The Income Tax Law.

- (a) Lease: a Lease is an agreement whereby one Party conveys to another Party the right to use Equipment for a defined period of time in exchange for a payment or series of payments. A Lease may also be referred to herein as a “Lease Agreement.”
- (b) Lessor: a Lessor is the Party to a Lease who owns or otherwise has the right to convey the use of Equipment to the other Party pursuant to the terms of the Lease Agreement.
- (c) Lessee: a Lessee is the Party to a Lease who is the user of the Equipment described in the Lease and who is obligated to make the payment or series of payments for such use to the Lessor, or to the order of the Lessor, as required by the terms of the Lease.

- (d) Equipment: Equipment means any asset that is subject to the depreciation schedules and provisions set forth in the Income Tax Law, and that does not include immovable property.
- (e) Party: a Party shall mean any natural or legal person or any other entity that is a party in a lease agreement.
- (f) Qualified Lease: a Qualified Lease means any Lease which complies with the following terms and conditions:
  - (i) The Lease must clearly identify the Lessor and Lessee and their Tax Identification Numbers.
  - (ii) The Lease must clearly identify the equipment to be leased to the Lessee,
  - (iii) The Lessor must convey the use of the Equipment to the Lessee for a fixed period of time clearly set forth in the Lease. Such period of time must represent at least fifty percent (50%) of the useful life of the Equipment as such useful life is defined by the Income Tax Law.
  - (iv) The Lessee must be obligated by the terms of the Lease to pay the Lessor for the use of the Equipment in fixed installments for the period set forth in (iii) above. The installments and their due dates must be clearly set forth in the Lease or in an attachment thereto.
  - (v) A copy of the Lease must be attached to each tax return filed by the Parties to the Lease.

Article 2      Lessor's Revenues and Deductions under a Qualified Lease

- (a) For purposes of the calculation of income tax, the gross Lease installments due according to the Qualified Lease shall be deemed taxable income regardless of whether such Lease installments have been characterized as capital gains or other income in respect of an imputed sale of the Leased Equipment to the Lessee, and/or to payments received from the Lessee in return for the Lessee's use of the equipment, or as interest on funds deemed to have been loaned to the Lessee for the imputed purchase of the Equipment.

- (b) A Lessor under a Qualified Lease shall also utilize the deductions for depreciation set forth in the Income Tax Law for the type of Equipment under Lease; provided however, that such deductions shall be utilized in their entirety over the period set forth in the Lease rather than for the periods set forth in the Income Tax Law.

Article 3      Lessor's Leasing Tax Credit under a Qualified Lease

- (a) The Lessor under a Qualified Lease shall have the right to credit, against income taxes owed during the first taxable period of the Lease, an amount equal to three percent (3%) of the cost of new Equipment under Lease ("Leasing Tax Credit"). The cost of Equipment shall not include transportation, VAT, installation or other similar costs associated with the acquisition of the Equipment. The term "new" Equipment shall mean Equipment which has not previously been put into service.
- (b) New Equipment specifically designated by the Income Tax Directorate and published in notices or regulations under the Income Tax Law shall be entitled to a five percent (5%) Leasing Tax Credit and available to a Lessor under a Qualified Lease as set forth in (a) above.

Article 4      Lessee's Deductions under a Qualified Lease

- (a) For purposes of the calculation and payment of income tax, a Lessee under a Qualified Lease shall deduct all installment payments required under the Lease at the times and in the amounts actually paid. These amounts shall include any amounts which may be set forth in the lease as payments made in respect of an imputed sale of the Equipment to the Lessee, and/or any the payments which may be set forth with respect to either the Lessee's use of the Equipment, and/or interest paid by the Lessee on such imputed sale.
- (b) No deductions for depreciation shall be available to any Lessee under a Qualified Lease where Article 4 (a) hereof has been utilized.

Article 5      Lessee Sale of Equipment

- (a) If, during the term of a Qualified Lease, a Lessee who has utilized Article 4 hereof shall sell the Equipment under Lease, then the Lessee's net revenue from such sale after the payments, including any penalties or premiums paid by Lessee to Lessor under the provisions of the Lease at the time of such sale, are deducted, shall be deemed taxable income to the Lessee.
- (b) If, after the end of the term of a Qualified Lease, a Lessee who has utilized Article 4 shall sell the Equipment, which was under Lease, then the net proceeds of such sale shall be deemed to be taxable income to the Lessee.

Article 6      Treatment of Option to Purchase in a Qualified Lease

- (a) In the event the terms of a Qualified Lease convey to a Lessee an option to purchase the Equipment at the end of the term of the Lease, then the Lessor, provided he has utilized Article 2 hereof, shall record any proceeds received from the exercise of any such option as ordinary income at the time it is received, and it shall be subject to taxation without further deduction for depreciation or other charges based on a percentage of Equipment cost.
- (b) In the event a Lessee who has utilized Article 4 hereof exercises an option to purchase Equipment pursuant to the terms of a Qualified Lease or otherwise acquires title thereto, the cost of acquisition to such Lessee shall not exceed one percent (1%) of the original Equipment cost. In this event, the Lessee's cost of acquisition shall not be subject to any further deductions for depreciation or other charges, or to any deduction based on a percentage of Equipment cost. These costs may be deducted from the taxable income if the Lessee exercises the option to purchase the Equipment, the cost of acquisition is in excess of (1%) of the original Equipment cost, and the lessee is entitled to deductions for depreciation under the provisions of the Income Tax Law. (Or under these regulations).

Article 7      Application of Regulation

- (a) The application of this Regulation to Lessors and Lessees of Qualified Leases shall be at the option of either the Lessor or the Lessee, provided that once the benefits of this Regulation have been utilized, no change may be made in its utilization.
- (b) Any Lease that is not a Qualified Lease shall utilize the applicable provisions of the Income Tax Law.

Article 8      Non-Applicability of Regulation

This regulation shall not apply in the following special cases:

- (a) If the Tax Books of either party of a Qualified Lease were canceled during the last two years.
- (b) In any other case the Directorate shall believe to be appropriate to forbid the misuse of this regulation by incompetent taxpayers.

Article 9      Effective Date of Regulation

This Regulation shall be effective with respect to all Qualified Leases entered into after January 1, 2002.